

SEALED

United States District Court
Southern District of Texas
FILED

MAR 4 2016

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

David J. Bradley, Clerk

UNITED STATES OF AMERICA

v.

RAMIRO ASCENCIO NEVAREZ,

Defendant.

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CRIMINAL NO. *M-16-0252*

PLEA AGREEMENT

The United States of America, by and through Andrew Weissmann, Chief of the Fraud Section of the Criminal Division of the United States Department of Justice (“Fraud Section”), and Christopher Cestaro and Kevin R. Gingras, Trial Attorneys, Fraud Section, and Kenneth Magidson, United States Attorney for the Southern District of Texas, and Jesse Salazar, Assistant United States Attorney, and Defendant, Ramiro Ascencio Nevarez (“Defendant”), and Defendant’s counsel, pursuant to Rule 11(c)(1)(A) and 11(c)(1)(B) of the Federal Rules of Criminal Procedure, state that they have entered into an agreement, the terms and conditions of which are as follows:

The Defendant’s Agreement

1. Defendant agrees to plead guilty to Count One of the Information. Count One charges Defendant with conspiracy, in violation of Title 18, United States Code, Section 1956(h), to engage in monetary transactions in property derived from violations of the Foreign Corrupt Practices Act, Title 15 United States Code, Section 78dd-2 (“FCPA”), a violation of Title 18, United States Code, Section 1957(a). Defendant, by entering this plea, agrees that he is waiving any right to have the facts that the law makes essential to the punishment either charged in an Indictment or proven to a jury or judge beyond a reasonable doubt.

Punishment Range

2. The statutory maximum penalty for a violation of Title 18, United States Code, Section 1956(h) with a Title 18, United States Code, Section 1957(a) object is a term of imprisonment of not more than ten years and a fine of not more than \$250,000 or twice the amount of the criminally derived property. Additionally, Defendant may receive a term of supervised release after imprisonment of up to three years. *See* Title 18, United States Code, Sections 3571(b)(3), 1957(b), and 3583(b)(2). Defendant acknowledges and understands that if he should violate the conditions of any period of supervised release which may be imposed as part of his sentence, then Defendant may be imprisoned for the entire term of supervised release, without credit for time already served on the term of supervised release prior to such violation. *See* Title 18, United States Code, Sections 3559(a) and 3583(e)(3). Defendant understands that he cannot have the imposition or execution of the sentence suspended, nor is he eligible for parole.

Mandatory Special Assessment

3. Pursuant to Title 18, United States Code, Section 3013(a)(2)(A), immediately after sentencing, Defendant will pay to the Clerk of the United States District Court a special assessment in the amount of one hundred dollars (\$100.00) per count of conviction.

Immigration Consequences

4. Defendant recognizes that pleading guilty may have consequences with respect to his immigration status if he is not a citizen of the United States. Defendant understands that if he is not a citizen of the United States, by pleading guilty he may be removed from the United States, denied citizenship, and denied admission to the United States in the future. Defendant's attorney has advised Defendant of the potential immigration consequences resulting from Defendant's plea of guilty.

The United States' Agreements

5. The United States agrees to each of the following:
 - (a) At the time of sentencing, the United States agrees not to oppose Defendant's anticipated request to the Court and the United States Probation Office that he receive a two-level downward adjustment under Section 3E1.1(a) of the Sentencing Guidelines should Defendant accept responsibility as contemplated by the Sentencing Guidelines; and
 - (b) If Defendant qualifies for an adjustment under U.S.S.G. Section 3E1.1(a) and Defendant's offense level is 16 or greater, the United States may move for an additional one-level downward adjustment based on the timeliness of the plea or the expeditious manner in which Defendant provided complete information regarding his role in the offense.

**Agreement Binding Only U.S. Attorney's Office for the Southern District of Texas
and U.S. Department of Justice, Criminal Division, Fraud Section**

6. The United States agrees that it will not further criminally prosecute Defendant in the Southern District of Texas for offenses arising from conduct charged in the Information. This Plea Agreement binds only the United States Attorney's Office for the Southern District of Texas; the United States Department of Justice, Criminal Division, Fraud Section; and Defendant. It does not bind any other United States Attorney or any other component or unit of the Department of Justice. The United States will bring this Plea Agreement to the attention of other prosecuting offices if requested.

United States' Non-Waiver of Appeal

7. The United States reserves the right to carry out its responsibilities under the Sentencing Guidelines. Specifically, the United States reserves the right to:
 - (a) Bring its version of the facts of this case, including its evidence file and any investigative files, to the attention of the Probation Office in connection with that office's preparation of a presentence report;
 - (b) Set forth or dispute sentencing factors or facts material to sentencing;
 - (c) Seek resolution of such factors or facts in conference with Defendant's

counsel and the Probation Office;

- (d) File a pleading relating to these issues, in accordance with U.S.S.G. Section 6A1.2 and Title 18, United States Code, Section 3553(a); and
- (e) Appeal the sentence imposed or the manner in which it was determined.

Sentence Determination

8. Defendant is aware that the sentence will be imposed after consideration of the Sentencing Guidelines, which are only advisory, as well as the provisions of Title 18, United States Code, Section 3553(a). Defendant nonetheless acknowledges and agrees that the Court has authority to impose any sentence up to and including the statutory maximum set for the offense(s) to which Defendant pleads guilty, and that the sentence to be imposed is within the sole discretion of the sentencing judge after the Court has consulted the applicable Sentencing Guidelines. Defendant understands and agrees the parties' positions regarding the application of the Sentencing Guidelines do not bind the Court, and that the sentence imposed is within the discretion of the sentencing judge. If the Court should impose any sentence up to the maximum established by statute, or should the Court order any or all of the sentences imposed to run consecutively, Defendant cannot, for that reason alone, withdraw a guilty plea, and will remain bound to fulfill all of the obligations under this Plea Agreement.

Waiver of Rights

9. Defendant represents to the Court that he is satisfied that his attorney has rendered effective assistance. Defendant understands that by entering into this Agreement, he surrenders certain rights as provided in this Plea Agreement. Defendant understands that those rights include the following:

- (a) Defendant understands that he has the right to have the facts of this case presented to a federal grand jury, consisting of between sixteen and twenty-three citizens, twelve of whom would have to find probable cause to believe

that he committed the offense set forth in the information before an indictment could be returned. Defendant acknowledges that he is knowingly and intelligently waiving his right to be indicted.

- (b) If Defendant persisted in a plea of not guilty to the charges, Defendant would have the right to a speedy jury trial with the assistance of counsel. The trial may be conducted by a judge sitting without a jury if Defendant, the United States, and the court all agree.
- (c) At a trial, the United States would be required to present witnesses and other evidence against Defendant. Defendant would have the opportunity to confront those witnesses and his attorney would be allowed to cross-examine them. In turn, Defendant could, but would not be required to, present witnesses and other evidence on his own behalf. If the witnesses for Defendant would not appear voluntarily, he could require their attendance through the subpoena power of the court.
- (d) At a trial, Defendant could rely on a privilege against self-incrimination and decline to testify, and no inference of guilt could be drawn from such refusal to testify. However, if Defendant desired to do so, he could testify on his own behalf.

Factual Basis for Guilty Plea

10. Defendant is pleading guilty because he is guilty of the charges contained in Count One of the Information. If this case were to proceed to trial, the United States could prove each element of the offense beyond a reasonable doubt. The following facts, among others, would be offered to establish Defendant's guilt:

"The Foreign Public University" was a public state university of "Foreign State," one of the thirty-one states that comprise Mexico. The Foreign Public University was controlled by Foreign State government and performed a public function of Foreign State.

From at least in or around 2012 to in or around January 2016, **RAMIRO ASCENCIO NEVAREZ ("ASCENCIO")** was an employee of The Foreign Public University with responsibility for maintaining its aircraft.

"Aviation Corporation A" was a United States company, headquartered in Brownsville,

Texas, which provided maintenance, repair, overhaul, and related services to customers in the United States and Mexico, including to The Foreign Public University.

“Executive 1” was a citizen of the United States and a resident of Texas. Executive 1 was an employee of Aviation Corporation A from in or around 1975 to at least in or around January 2016.

“Executive 2” was a citizen of the United States and a resident of Texas. Executive 2 was the Director of Maintenance of Aviation Corporation A from in or around 1978 through at least in or around January 2016.

From in or around 2012 through at least in or around May 2015, United States citizens, including Executive 1, Executive 2, and others, knowingly, willfully, and corruptly agreed to make payments to **ASCENCIO** to influence **ASCENCIO** in his official capacity and to secure an improper advantage for their company, Aviation Corporation A, located in the Southern District of Texas, in order to assist Aviation Corporation A in obtaining and retaining business with The Foreign Public University.

From in or around 2012 through at least in or around May 2015, **ASCENCIO** knowingly and willfully conspired with individuals known and unknown, including Executive 1 and others, to use the proceeds of the bribery scheme to engage in monetary transactions from U.S. bank accounts that affected interstate commerce and were of a value greater than \$10,000.

For example, on or about November 29, 2012, **ASCENCIO**, Executive 1, and others knowingly and willfully used, and caused to be used, the proceeds of the bribery scheme to issue a \$30,000 check payable to **ASCENCIO** from Aviation Corporation A’s bank account in the Southern District of Texas, and **ASCENCIO** later deposited that check into his bank account in the Southern District of Texas.

In furtherance of the conspiracy, **ASCENCIO** and his co-conspirators, including Executive 1 and others, knowingly and willfully used, and caused to be used, the proceeds of the bribery scheme to engage in monetary transactions in excess of \$10,000 totaling at least \$138,234.60.

Breach of Plea Agreement

11. If Defendant should fail in any way to fulfill completely all of the obligations under this Plea Agreement, the United States will be released from its obligations under the Plea Agreement, and Defendant's plea and sentence will stand. If at any time Defendant retains, conceals or disposes of assets in violation of this Plea Agreement, or if Defendant knowingly withholds evidence or is otherwise not completely truthful with the United States, then the United States may move the Court to set aside the guilty plea and reinstate prosecution. Any information and documents that have been disclosed by Defendant, whether prior to or subsequent to this Plea Agreement, and all leads derived therefrom, will be used against Defendant in any prosecution.

Restitution, Forfeiture, and Fines – Generally

12. This Plea Agreement is being entered into by the United States on the basis of Defendant's express representation that he will make a full and complete disclosure of all assets over which he exercises direct or indirect control, or in which he has any financial interest. Defendant agrees not to dispose of any assets or take any action that would effect a transfer of property in which he has an interest, unless Defendant obtains the prior written permission of the United States.

13. Defendant agrees to make a complete financial disclosure by truthfully executing a sworn financial statement (Form OBD-500 or similar form) within 14 days of signing this plea agreement. Defendant agrees to authorize the release of all financial information requested by the United States, including, but not limited to, executing authorization forms permitting the United

States to obtain tax information, bank account records, credit histories, and social security information. Defendant agrees to discuss and answer any questions by the United States relating to Defendant's complete financial disclosure.

14. Defendant agrees to take all steps necessary to pass clear title to forfeitable assets to the United States and to assist fully in the collection of restitution and fines, including, but not limited to, surrendering title, executing a warranty deed, signing a consent decree, stipulating to facts regarding the transfer of title and the basis for the forfeiture, and signing any other documents necessary to effectuate such transfer. Defendant also agrees to direct any banks which have custody of his assets to deliver all funds and records of such assets to the United States.

15. Defendant understands that forfeiture, restitution, and fines are separate components of sentencing and are separate obligations.

Forfeiture

16. Defendant stipulates and agrees that the factual basis for his guilty plea supports the forfeiture of at least \$138,234.60 against him and in favor of the United States, and Defendant agrees to the imposition of a personal money judgment for that amount against him and in favor of the United States of America. Defendant stipulates and admits that one or more of the conditions set forth in Title 21, United States Code, section 853(p), exists. Defendant agrees to forfeit any of his property, or his interest in property, up to the value of any unpaid portion of the money judgment, until the money judgment is fully satisfied.

17. Defendant agrees to waive any and all interest in any asset which is the subject of a related administrative or judicial forfeiture proceeding, whether criminal or civil, federal or state.

18. Defendant consents to the order of forfeiture becoming final as to Defendant immediately following this guilty plea, pursuant to Federal Rule of Criminal Procedure 32.2(b)(4)(A).

19. Defendant waives any requirements of Rules 7, 32.2, and 43(a) of the Federal Rules of Criminal Procedure regarding forfeiture, including notice of the forfeiture in the information, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgement. Defendant understands that the personal money judgment referenced in Paragraph 16 above is part of the sentence that may be imposed in this case.

20. Defendant waives the right to challenge forfeiture in any manner, including by direct appeal or in a collateral proceeding.

Fines

21. Defendant understands that under the Sentencing Guidelines the Court is permitted to order Defendant to pay a fine that is sufficient to reimburse the government for the costs of any imprisonment or term of supervised release, if any. Defendant agrees that any fine imposed by the Court will be due and payable immediately, and Defendant will not attempt to avoid or delay payment. Defendant waives the right to challenge the fine in any manner, including by direct appeal or in a collateral proceeding.

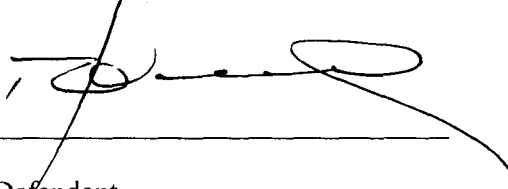
Complete Agreement

22. This written Plea Agreement, consisting of 12 pages, including the attached addendum of Defendant and his attorney, constitutes the complete Plea Agreement between the United States, Defendant, and his counsel. No promises or representations have been made by the United States except as set forth in writing in this Plea Agreement. Defendant acknowledges that no threats have been made against him and that he is pleading guilty freely and voluntarily because

he is guilty.

23. Any modification of this Plea Agreement must be in writing and signed by all parties.

Filed at McAllen, Texas, on March 7, 2016.




Defendant


APPROVED:

KENNETH MAGIDSON
United States Attorney

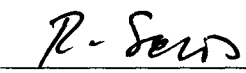
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PLEA AGREEMENT - ADDENDUM

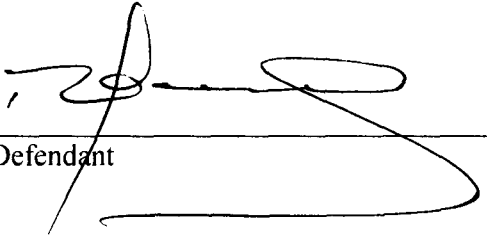
I have fully explained to Defendant his rights with respect to the Information. I have reviewed the provisions of the United States Sentencing Commission's Guidelines Manual and Policy Statements and I have fully and carefully explained to Defendant the provisions of those Guidelines which may apply in this case. I have also explained to Defendant that the Sentencing Guidelines are only advisory and the court may sentence Defendant up to the maximum allowed by statute per count of conviction. Further, I have carefully reviewed every part of this Plea Agreement with Defendant. To my knowledge, Defendant's decision to enter into this Agreement is an informed and voluntary one.

R. San
Attorney for Defendant

3/04/16
Date

I have consulted with my attorney and fully understand all my rights with respect to the Information pending against me. My attorney has fully explained and I understand all my rights with respect to the provisions of the United States Sentencing Commission's Guidelines Manual

which may apply in my case. I have read and carefully reviewed every part of this Plea Agreement with my attorney. I understand this Agreement and I voluntarily agree to its terms.


Defendant

3/04/16
Date